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Message Text

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73
ACTION OPIC-06

INFO OCT-01 ARA-06 ISO-00 EB-07 AID-05 COME-00 TRSE-00

OMB-01 CIAE-00 INR-07 NSAE-00 /033 W
---------- 029575
R 181347Z NOV 76
FM AMEMBASSY BOGOTA
TO SECSTATE WASHDC 8477

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FOR OVERSEAS PRIVATE INVESTMENT CORPORATION

E.O. 11652: N/A
TAGS: EFIN, EINV, CO
SUBJECT: CABOT CORPORATION INCONVERTIBILITY CLAIM

REF: STATE 275058

1. EMBASSY FORSEES SEVERAL PROBLEMS IN REPAYMENT PROCEDURE AS OUTLINED IN REFTEL. FROM A TECHNICAL STANDPOINT, TO ESTABLISH A FT ACCOUNT FOR THIS OPIC TRANSACTION, THE DEPARTMENT OF THE TREASURY WOULD HAVE TO GIVE THE APPROVAL.

2. SECONDLY, THIS REPAYMENT PROCEDURE WOULD CIRCUMVENT COLOMBIAN LAW (ARTICLE 21, DECREE 1900), AND WOULD INVOLVE THE US EMBASSY IN DOING SO. AS WE UNDERSTAND IT, CABOT CORP. IN COLOMBIA WOULD TRANSFER 12,098,861 PESOS TO THE EMBASSY; LHE STATE DEPARTMENT WOULD PAY OPIC; OPIC IN TURN, WOULD PAY CABOT CORP. OF THE UNITED STATES THE FULL AMOUNT IN DOLLARS. THE END RESULT WOULD BE THE SAME THING AS IF CABOT CORP OF COLOMBIA PAID CABOT CORP OF THE US THE ROYALTY PAYMENTS, WHICH IS IN CLEAR VIOLATION OF ART 21 OF DECISION 1900. AS FAR AS THE EMBASSY CAN DETERMINE WITHOUT MAKING OFFICIAL INQUIRIES, THIS PROCEDURE WOULD PROBABLY VIOLATE COLOMBIAN FOREIGN EXCHANGE LAWS.

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3. ANOTHER QUESTION IS RAISED SINCE, TO OUR KNOWLEDGE,

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THIS IS AN UNPRECEDENTED TEST CASE WHICH COULD DETERMINE IF OPIC HAS SUBROGATION RITHTS AGAINST THE COLOMBIAN GOVERNMENT ON THE BASIS OF THE EXCHANGE OF NOTES SIGNED ON OCTOBER 5, 1962. WE ARE NOT AWARE OF ANY COMPREHENSIVE TREATY WHICH GIVES OPIC SUBROGATION RIGHTS AGAINST THE COLOMBIAN GOVERNMENT IN AN INVESTMENT DISPUTE. ALTHOUGH AN AGREEMENT WAS CONTEMPLATED DURING THE MID-60'S, IT WAS NEVER APPROVED. THE EXCHANGE OF NOTES DOES NOT MENTION ANYTHING ABOUT SUBROGATION RIGHTS FOR OPIC OR WHAT WILL HAPPEN IN AN INVESTMENT DISPUTE. IT SIMPLY STATES TAHT THE GOVERNMENTS OF THE UNITED STATES AND COLOMBIA WILL CONSULT CONCERNING INVESTMENTS IN COLOMBIA WHICH THE US GOVERNMENT WILL GUARANTEE AND THAT THE UNITED STATES WILL NOT GUARANTEE AN INVESTMENT IN COLOMBIA UNLESS THE GOVERNMENT OF COLOMBIA APPROVES THE ACTIVITY AND RECOGNIZES THAT THE US GOVERNMENT MAY GUARATEE THE INVESTMENT.

4. IT IS OUR UNDERSTANDING THAT, IN AN ONCONVERTIBILITY CLAIM, OPIC ACTS AS A TRANSFEREE OF LOCAL CURRENCY, IN EXCHANGE FOR WHICH OPIC GIVES THE COMPANY DOLLARS. IN THIS CASE, OPIC IS NOT SUBROGATED TO ANY RIGHTS OF THE INVESTOR. THEREFORE, THE ISSUE OF SUBROGATION IS NOT DIRECTLY RELEVANT TO THE CABOT UNCONVERTIBILITY CLAIM. HOWEVER, IF OPIC ABSORBS A FOREIGN EXCHANGE LOSS IN THE TRANSACTION, DOES OPIC HAVE RECOURSE AGAINST THE COLOMBIAN GOVERNMENT FOR REPAYMENT OF THIS AMOUNT? IF SO, THE SUBROGATION ISSUE DOES COME INTO PLAY.

5. WHAT IS THE OPINION OF THE LEGAL ADVISOR OF STATE DEPARTMENT? SPECIFICALLY, A) ARE THE 1962 EXCHANGE OF NOTES STILL IN FORCE? B) DOES OPIC HAVE SUBROGATION RIGHTS UNDER THE EXCHANGE OF NOTES, FOR THOSE CONTRACTS ISSUED PRIOR TO ART. 51, OF DECISION 24, IMPLEMENTED IN COLOMBIA BY DECISION 1900 ON SEPTEMBER 15, 1973?

6. FROM THE INFORMATION GIVEN IN REFTEL, IT IS UNCLEAR WHETHER 12,098,861 PESOS REPRESENTS THE FULL
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AMOUNT OF THE ROYALTY PAYMENTS OWED CABOT USA BY THEIR COLOMBIAN SUBSIDIARY. WAS A FORMAL REQUEST MADE TO THE ROYALTY COMMITTEE OF THE BANCO DE LA REPUBLICA FOR PERMISSION TO MAKE THESE PAYMENTS? IF A NEGATIVE ANSWER WAS RECEIVED, WHY DID CABOT CORP WAIT UNTIL NOW TO MAKE AN INCONVERTIBILITY CLAIM?

7. IF DEPARTMENT AND OPIC WISH TO PURSUE THIS MATTER,

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EMBASSY SUGGESTS THAT OPIC FURNISH THE WORDING FOR A
DIPLOMATIC NOTE WHICH WE CAN FORWARD TO THE FOREIGN
OFFICE IN AN ATTEMPT TO RESOLVE THESE QUESTIONS.
POINTS WHICH SHOULD BE ADDRESSED INCLUDEC A) DOES
ROYALTY PAYMENT TRANSFER PROCEDURE USING THE US
EMBASSY AS DESIGNEE VIOLATE COLOMBIAN CURRENCY EXCHANGE
LAWS OR ARTICLE 21 OF DECISION 1900? B) DOES THE
GOC RECOGNIZE OPIC SUBROGATION RIGHTS BASED ON THE
1962 EXCHANGE OF NOTES FOR THOSE INVESTMENT INSURANCE
CONTRACTS SIGNED PRIOR TO SEPTEMBER 15, 1973?
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